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STATUTORY BIRD PROTECTION  
IN  
MASSACHUSETTS.

By EDWARD HOWE FORBUSH, 1907  
ORNITHOLOGIST OF MASSACHUSETTS STATE BOARD OF AGRICULTURE.



REPRINTED FROM THE SEPTEMBER, 1907, BULLETIN OF MASSACHUSETTS STATE  
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# STATUTORY BIRD PROTECTION IN MASSACHUSETTS.

By EDWARD HOWE FORBUSH,  
*Ornithologist of Massachusetts State Board of Agriculture.*

[Reprinted from the Bulletin of Massachusetts State Board of Agriculture.]

It is common talk, especially in rural communities, that "the more laws we pass for the protection of birds and game the fewer birds and the less game we see." A certain section of the press reflects this sentiment, even to the extent of advocating the abolition of the game laws. This is a popular error, arising from a confusion of cause and effect. If we transpose the trite saying, and opine instead that the fewer the birds and game become the more laws are passed for their protection, we shall then have the proper relation of effect and cause. When the fact is thus properly stated it becomes a truism which explains at once that the reason of the depletion of birds and game is the lack of adequate protection.

A careful examination of the laws that have been enacted for the protection of birds and game since the first settlement of Massachusetts, together with a comparison of the records of the numbers of birds observed during this period, shows clearly why statutory protection has thus far failed to protect, and indicates the remedy by which we may save those species of birds which are not already too near extermination to admit of salvation.

The earlier records of the Massachusetts Bay Colony show no provision for the protection of birds; but in 1632 it was ordered "that noe pson w'soeur shall shoote att fowle vpon Pullen Poynte or Noddles Ieland but that the s<sup>d</sup> places shalbe reserved for John Perkins to take fowle w<sup>th</sup> netts."<sup>1</sup>

Thus a single person was given a monopoly of bird destruction on certain lands.

The continued policy of unstayed slaughter had produced so marked an effect on the wild ducks, geese and swans during the first part of the next century that in 1710 a province law was enacted which prohibited the use, in fowling, of boats or canoes with sails, or of any kind of disguised craft. The preamble of this act states clearly the necessity for its passage as follows:—

Whereas the water-fowl of divers kinds, which were wont in former years in great numbers to frequent the maritime towns of this province were of great service and benefit to the inhabitants, both for meat and feathers, but are now, in great measure, affrighted and driven away by many persons who have made use of boats or canoes with sails, or canoes or floats trimmed up, covered,

<sup>1</sup> "Records of the Governor and Company of the Massachusetts Bay in New England," Vol. I., p. 94.

or disguised with hay, sedge, sea-weed, ice, cloths or other materials, therein to go off to shoot at them at distances from the shoar upon the flatts and feeding ground, which practices if continued are likely to have the ill affect to cause the fowl wholly to desert and disuse the said towns.<sup>1</sup>

The fine imposed for infractions of the law was 40 shillings, half to go to the informer and half to the poor of the town, and the culprit was estopped from shooting for three years after conviction, on penalty of a similar fine. The act continued in force until March 10, 1713, and was re-enacted from time to time until the revolutionary period, after which it lapsed. During provincial times there appears to have been no other statute enacted for the protection of any species of bird; but the towns were empowered to raise money to pay bounties on the heads of birds and mammals, and bounties were paid on the heads of crows, blackbirds, and ruffed grouse or partridges.

After Massachusetts became a State apparently no attention whatever was paid to the protection of birds for more than a quarter of a century, for it was not until 1818 that any statutory regulation of shooting was enacted. The preamble to the act of 1818 follows:—

Whereas there are within the Commonwealth, many birds which are useful and profitable to the citizens, either as articles of food, or as instruments in the hands of Providence to destroy various noxious insects, grubs and caterpillars, which are prejudicial or destructive to vegetation, fruits and grain; and it is desirable to promote the increase and preservation of birds of the above description and to prevent the wanton destruction of them at improper seasons.

This shows that even in those early days there was an intelligent appreciation of the value of birds to man.

At that time the effects of unrestricted shooting had become evident, not only upon the upland game birds, but even on such smaller species as robins and meadow larks. This act (chapter CIII., 1818) protected partridges and quail from March 1 to September 1, and woodcocks, snipe, larks and robins (which evidently were regarded as fair game for all) from March 1 to July 4, but it was nullified to some extent by local option, as the voters of any town could suspend the law's provisions within the town limits for one year by taking action at the regular town meeting. This act, inadequate as it was, signalized the first attempt of the Commonwealth of Massachusetts to protect her upland game birds, notwithstanding the fact that some of these birds had been decreasing in numbers for many years. Dwight wrote in his "Travels in New England and New York," published in 1821, that wild turkeys had then greatly lessened in numbers. Notwithstanding the noticeable decrease they were never protected by law, but were killed off rapidly, and the last bird of the last flock recorded in Massachusetts was killed on Mount Tom in 1851. Evidently protective laws were not the cause of the extirpation of the wild turkey. Like the great auk, it was the victim of unrestricted persecution by man at all seasons.

It will be impossible, within the limits of this paper, to give even the briefest abstract of the bird laws passed by this Commonwealth since 1818; therefore no attempt will be made to show more than their general purpose and effect. For the convenience of the reader, the legislation for each group of birds will be treated separately.

<sup>1</sup> "Acts and Resolves of the Province of Massachusetts Bay," Vol. I., p. 667.

## WATERFOWL.

After the re-enacted province law of 1710 finally lapsed, soon after the revolutionary period, the protection of waterfowl was not taken up again in a general way until 1886. During the latter part of the seventeenth century and the earlier part of the eighteenth these birds had no protection at any time of the year, except a law passed in 1821 protecting birds on salt marshes between March 1 and September 1. Landowners, however, were allowed to shoot on their own land, and towns had local option regarding the acceptance of the law. No doubt its provisions were nullified by towns in some cases. At that time (1821) Dwight wrote that waterfowl still existed in great abundance. Even then, however, they had decreased in numbers in the waters of the most populous maritime towns, and their flocks continued to diminish, particularly in the interior, for Sylvester Judd in his "History of Hadley," published in 1863, says, "wild ducks were formerly abundant. Now but few alight about our ponds and streams."<sup>1</sup>

By 1865 the decrease of wild fowl, even on the remoter coastwise feeding grounds of the State, had become noticeable, and the people of certain towns began to call loudly for special local protection for the birds. In 1865 the worrying and pursuing of birds by boats on Popponessett and Waquoit bays was prohibited. This was followed in 1867 and 1869 by similar acts for the protection of sea fowl in the waters of Edgartown, Tisbury and Barnstable. Section 6, chapter 246 of the Acts of 1869, was designed to give wild fowl some protection, as it forbade shooting or pursuing fresh-water fowl or sea fowl from, or by means of, boats or vessels of any kind in any of the waters of the State. It also prohibited the killing of sea fowl or fresh-water fowl on the feeding or roosting grounds; but this was repealed the next year, and the use of batteries and swivel guns was forbidden.

By that time, however, the decrease of the more common river ducks, which are in most demand for food, had become so marked that a law was passed (1870) giving wood duck, black duck and teal protection from March 1 to September 1. This was the first real respite that these ducks had in this State during the breeding season, and the gunner was still privileged to shoot all other waterfowl at all times.

Now commenced that juggling with the game laws for which the people of this Commonwealth are famous. We tried closing the season for black duck and teal on April 1 in 1875, on April 15 in 1877 and on April 1 in 1881. We protected *all* ducks for the first time in 1886, beginning April 1. In 1888 we made the date April 15, and this date remained fixed until 1900, when at last the pitiful remnant of wood duck, black duck and teal that bred in the State were given a little peace by the revival of the first of March as the beginning of the close season. In the meantime, the opening of the season for wood duck, black duck and teal had varied considerably but was finally fixed at September 1. All other ducks can still be shot until May 20. A special law was passed in 1888 to prohibit the pursuit of black ducks in boats or floating devices in Plymouth harbor, and in 1900 this was repealed, and its provisions extended to geese and other aquatic birds. Some local restrictions were enacted during the latter part of the century to prevent the use of sail boats or power boats in pursuit of waterfowl, notably in Boston harbor. Protection for

<sup>1</sup> Judd Sylvester, "History of Hadley," p. 354.

the wood duck had come so late that the species continued to decrease rapidly in spite of the law protecting it during the breeding season. In 1906 the killing of this bird was prohibited at all times for five years, — an attempt to stay its extirpation which some other States are beginning to adopt.

The sale of ducks and teal during the close season is now unlawful, but only resident black ducks, wood ducks and teal receive any real protection from our game laws to-day, and they receive very little, for when men are in the field with guns in their hands until May 20 all ducks will be shot. The northern or red-legged black duck and all other ducks are protected by our law only when most of them are out of the State, and geese can be legally shot at all seasons. Who will wonder that such protection does not protect?

#### SHORE BIRDS.

The first protection was extended to shore birds in Massachusetts by chapter X. of the statutes of 1821, framed to prevent the destruction of birds on salt marshes between March 1 and September 1. This act undoubtedly helped somewhat to stay the extirpation of several species. But in 1835 the curlews and other larger shore birds had been so depleted that a law was passed to protect "plover, curlew and dough bird or chicken bird" throughout the State from April 20 to September 1, *at night only*. This law failed to give the birds much respite, and their decrease continued. In 1836 the sale of marsh birds was prohibited during the close season. In 1860 a retrograde step was taken in adding July and August to the open season on the salt marshes.

The slaughter went on without much restriction until 1869, when all spring and late winter shooting of marsh birds and upland plover was cut off by closing the season from January 1 to July 1. This was repealed at the next session of the Legislature, and in 1870 the law named the close season for marsh and beach birds as April 1 to July 15, except that "Wilson's snipe, red-breasted, black-breasted and chicken plover," four of the most persecuted game birds, were left without any protection whatever.

From this time forward the law exhibited the usual vacillation in regard to dates from year to year, and the birds were protected most of the time by our statutes only when out of the State, until 1886, when all marsh and beach birds were protected from May 1 to July 1. In 1903 the beginning of the close season was fixed at March 1. After a fight of several years' duration, Mr. Geo. H. Mackay, representing the American Ornithologists Union and the Massachusetts Audubon Society succeeded in securing, in 1904, legislation prohibiting the sale of marsh or beach birds during the close season. This was followed in 1905 by an act protecting the Bartramian sandpiper or upland plover at all times for five years. Before the passage of these acts, however, several species of the larger shore birds had been practically eliminated from the State. The shore birds have always been inadequately protected, and we still allow them to be shot in summer.

#### UPLAND GAME BIRDS.

When the Puritans landed at Plymouth the upland game birds of the colony consisted of the wild turkey, the pinnated grouse or heath hen, the ruffed grouse or partridge, the bobwhite or quail and the woodcock, which spends a part of the year on the uplands and for convenience may be classed with the others. All of these birds were

very plentiful. Under a policy of unrestricted shooting the wild turkeys finally disappeared, and the heath hens, which were at first very numerous, even on the site of Boston, were so reduced in numbers that Dr. Dwight published the statement in 1821 that they were no longer common, and Sylvester Judd gives testimony in the "History of Hadley" to the effect that they probably disappeared from the region near Springfield about 1813. In 1831 they had become so rare in the State that a special act was passed protecting them during the breeding season, or from March 1 to September 1, under penalty of a two-dollar fine. This partial remedy proved entirely ineffective, and the grouse were soon destroyed and driven out until Cape Cod became their last stronghold on the mainland of Massachusetts. These birds were now disappearing throughout their range in the Atlantic coast States, and in 1837, after they had disappeared from the mainland, a special statute was passed, establishing a close season for the heath hen for four years, with a penalty of \$10 and a forfeit of \$10 to the landowner. This was extended five years more in 1841 and in 1844 the fine was increased to \$20 in addition to the \$10 forfeit to the landowner, and the possession or sale of the birds was forbidden. All these provisions, too late to be effective, were of no avail, except to protect the few left on Martha's Vineyard.

In 1855 all protection was removed from this bird; still for five years the last remnant of the race persisted, unprotected, in the wild and bushy interior of Martha's Vineyard, where they were not much molested. In 1860 they were again protected by law at all times, under a penalty of \$20, but in 1870 the date of such protection was fixed at a period of five years. Since that time the remnant of the species has managed to exist on the island. They are now guarded and protected at all times, as the Commissioners on Fisheries and Game are empowered to give them special care, that this valuable game species may be propagated and increased in numbers.

The ruffed grouse or partridge, the bobwhite or quail and the woodcock had no protection in Massachusetts at any time until 1818, when the close season was established on the first two birds, beginning March 1 and ending September 1, and woodcock were protected from March 1 to July 4. Since then all these birds have been shielded by law at some season, but during the latter half of the eighteenth century there was a periodical fight between the forces of protection and those of destruction, which resulted in frequent changes of the statutes, so that at one time or another during this period the close season either began or ended in each of the fall and winter months, while the beginning of the open season fluctuated similarly through most of the summer and fall months. The quail suffers much from hard winters, and no law can protect it; but shooting should be prohibited for at least two years after each such winter, and the sale of the birds should be stopped.

A great volume of legislation has been enacted in regard to the partridge. The tendency has been to improve the bird's chances, and now with an open season of only two months, and with snaring and sale of partridge and woodcock prohibited, these birds have a fair chance to perpetuate their species. Both the partridge and quail, however, are now menaced by contagious diseases which are likely to be introduced among them by chickens, turkeys and pheasants.<sup>1</sup>

The woodcock fared worst in the ups and downs of oscillating

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<sup>1</sup> See the annual report of the Massachusetts Commissioners on Fisheries and Game for 1906.

legislation, and by 1850 summer shooting had decimated the breeding birds in some localities, and it was prohibited for a while; but even as late as 1889 woodcock could be legally shot in August in this enlightened Commonwealth. At last, after more experimenting, the open season was reduced in 1900 to two months (October and November), and the woodcock now appears to be holding its own in some localities.

#### PIGEONS AND DOVES.

The extraordinary abundance of the wild or passenger pigeon in this country is said to have exceeded that of any other bird in this or any other land. Early settlers of Massachusetts asserted that the passing flocks covered the whole sky for hours at a time, darkening the sun and subduing the light of day, and that but a few leagues from where Boston now stands the nests of the pigeons covered the trees of the pine forest for miles. The multitude of these birds was so prodigious, and they roamed so widely over the continent, that it became the general belief that they needed no protection, and that their extermination was impossible.

The first legislation regarding them was chapter 85 of the Acts of 1848, which was framed to protect the pigeon netters from interference, and imposed a penalty of \$10 beside actual damages on any one who should be convicted of the heinous offense of frightening pigeons away from the nets. In 1849 this penalty was increased to \$20, or imprisonment for not more than thirty days. Thus the pigeon was denied protection, while its greatest enemies, the netters, were safeguarded in their nefarious business. The parent birds were trapped and shot at their nesting places, and the young left to starve, or clubbed out of the nests and killed for food. Even the swarming millions of the pigeons could not withstand slaughter at all seasons. Their numbers in Massachusetts rapidly grew less. Nevertheless, we find no protection whatever accorded them until 1879, when as they were rapidly nearing extinction a law was passed protecting them on their breeding grounds; but even then the netter or hunter could trap or shoot them coming or going to or from their nests. At this time, however, the pigeons had been practically driven out of the State, and only a few were occasionally seen in the migrations; but our people were not awake to the fact that the extermination of the pigeons was very near. Finally, in 1886, when the species was nearly extinct in the State, a law was passed establishing a general close season. The last authentic record of a wild pigeon in this State is given by Howe and Allen as in 1889. In 1901 the Legislature prohibited the killing of pigeons for all time. Comment is unnecessary. The last bird I have seen recorded as killed in either the United States or Canada was taken near Babcock, Wis., in September, 1900.<sup>1</sup> Reports occasionally are received of the appearance of pigeons in some part of the country, and possibly there may be a few left; but naturalists are offering large rewards for specimens, and thus far not a single bird has been secured. Probably the birds seen are Carolina doves.

These doves, like the pigeons, once roamed over a large part of the continent, but never congregated in such large flocks, and, unlike the pigeon, they soon become gun-shy wherever they are hunted, although very tame where protected. They have thus escaped the fate of the pigeons, and a few are still found breeding in Massachusetts, while in the fall small flocks may be seen occasionally. They resemble

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<sup>1</sup> Mershon, W. B. "The Passenger Pigeon," p. 223. New York, 1907.

the wild pigeon, except for their smaller size, and are often mistaken for it. There seems to have been no attempt to protect them until 1879, when they were presumably included in chapter 209 among the "other undomesticated birds, except birds of prey," etc., not to be killed at any time. This, however, gave them scarcely any immunity, as they were mistaken for wild pigeons, and are still shot by gunners when opportunity offers, notwithstanding the fact that a provision inserted in chapter 414, Acts of 1905, specifically protects them at all times.

#### NON-GAME BIRDS.

The Indians did not kill small birds, nor did the settlers disturb them. So long as deer, turkey, grouse, wild fowl and shore birds were abundant the smaller game birds, the herons and other fish eaters, and the song birds were safe from molestation by man. But in the first half of the nineteenth century, when the larger game grew rare, gunners and boys began shooting woodcock, snipe, robins and larks, and the act of 1818 was found necessary to protect these birds in the breeding season. From that time complaints appeared periodically in the press regarding the conduct of boys who shot small birds. Within the past twenty years immigrants from Italy have become very destructive to song birds. Until recent years there has been no provision protecting the eggs of birds. The gunners and eggers had driven away most of the sea birds from their breeding places along the coast, and the business of procuring the eggs of birds for collectors had assumed considerable proportions. Finally, in 1869, the taking or killing of all undomesticated birds not otherwise protected, except hawks, owls, crows, jays and gulls, and the taking of birds' eggs, except those of the birds above mentioned, was prohibited, but a proviso was inserted allowing the killing of birds or the taking of eggs under permit for scientific purposes. This tended to limit the work of the professional egg collector, but it failed to protect the gulls and terns, the plumage of which was eagerly sought by the milliners. Many thousands of these birds were killed on their breeding grounds and the young left to starve.

At last, in 1879, when the diminution of these birds had become painfully evident, partial protection was given the birds by establishing a close season between May 1 and September 1. In 1881 the season was shortened. In 1886 it was extended, and so on.

Finally, in 1901, the smaller gulls and the terns were protected by law at all times. The terns of Massachusetts undoubtedly would have been exterminated long before that time but for the efforts of Mr. Geo. H. Mackay and his associates in securing protection for them on their breeding grounds on Muskeget and Penikese islands. In the meantime, the least tern or sea swallow was nearly exterminated from Massachusetts. An open season on the larger gulls was maintained until 1907, although every other Atlantic coast State which they inhabit had previously passed laws protecting them at all times.

Herons and bitterns never had any specific statutory protection in this State until 1903, when the great blue heron had been virtually driven out of the State as a breeder, and was rarely seen except during its migrations, and the smaller herons had been greatly reduced in numbers and most of their heronries broken up. It is now unlawful to kill them at any time, except when in the act of catching trout artificially confined. Already night herons are increasing in some localities, owing to the beneficial effects of protection.

Hawks and owls never had any protection in this State until the

year 1907. Most species have decreased very rapidly. Now all the most useful owls are protected at all seasons, and it is lawful to take or kill only the barred owl, the great horned owl and the sharp-shinned hawk, Cooper's hawk, goshawk, red-tailed hawk, red-shouldered hawk and duck hawk. Town bounties on the other species can no longer be legally paid or collected. All eagles and the osprey or fish hawk are likewise protected at all times.

In 1897 an act was passed providing a penalty of \$10 for the offense of having in possession the body or feathers of any undomesticated bird then protected at all times by chapter 276 of the statutes of 1886. This statute also prohibited the wearing of such feathers for dress or ornament. It was aimed at the milliners who provided the feathers and their patrons who wore them, and has largely broken up the traffic in the feathers of native birds that are protected at all seasons. In 1902 the traffic in native song birds for cage purposes had grown so destructive that a special penalty of \$10 was provided for capturing or possessing any bird protected by law throughout the year.

In the meantime, the shooting of small birds by foreigners about cities and near construction camps of laborers had become so serious an evil that a law was passed (chapter 317, Acts of 1905) requiring all unnaturalized foreign-born persons to pay a license fee of \$15 for a license giving them the privilege of hunting. This law has checked somewhat the destruction of birds and game by Italians and other foreigners.

#### GENERAL BIRD LAWS.

One of the most important statutes for the general protection of birds and game was passed in 1899, making "the Lord's Day" a close season, and imposing on the lawbreaker the penalties incurred by breaking the game laws in addition to those usually inflicted for infractions of the "Sunday laws." This statute was revised in 1902, and in 1904 it was made still more effective and severe by providing a penalty of \$10 to \$20 in addition to usual fines for hunting or killing game in close season.

The Legislature of 1907 passed a law requiring all non-resident hunters, except those who were members of shooting clubs already incorporated and established in the State, to pay a license of \$10 for the privilege of hunting in the State. This is a good law with the exception of the exemption.

#### FINES AND FORFEITURES.

Beginning in 1818, with a fine of \$1 or \$2 for the killing of each bird in defiance of the law, penalties have been increased or decreased from year to year. The general tendency, however, has been to increase the fines. The maximum of \$100 per bird has been reached in the case of the heath hen. The foreigner or non-resident who hunts without a license may be fined \$50. The same fine may be required of any person who kills a wood duck or from any one who uses a live decoy for black ducks in Nantucket. In general, a fine of \$20 is imposed for each game bird killed out of season, but \$10 only is required in the case of each shore bird, and the same amount in that of each other undomesticated bird or each nest or egg of such bird as is protected at all times.

### THE ENFORCEMENT OF THE BIRD LAWS.

Until the year 1896 our game laws were rather ineffective, for there was no one who considered it his duty to enforce them. In 1896 the Commissioners of Inland Fisheries were given by law the powers of game commissioners. This was the most important step taken for the protection of birds and game up to that time, for it assured, in some measure, at least, the enforcement of the law. The powers and duties of the commissioners have been extended from time to time, and their efficiency has been increased.

In 1894 a resolve was enacted providing for the introduction of Mongolian pheasants. The species introduced was the ring-neck. In 1895 the commissioners were authorized to propagate birds and animals, and the sum of \$500 was appropriated for the purpose of purchasing and propagating pheasants. While the introduction of the pheasants may not have been an unmixed blessing, the experience gained in propagating birds will be of value to the Commonwealth, for unquestionably the time has come for Massachusetts to experiment, with a view of eventually propagating and distributing native game birds to supply her depleted covers.

### NEEDED LEGISLATION.

This necessarily limited and imperfect review of our legislative enactments for the conservation of birds exhibits clearly the main reasons why protection has, in many cases, failed to protect. The principal reasons for this failure are four in number: (1) legislation has been spasmodic and vacillating, (2) laws and penalties have not been sufficiently stringent, (3) until recent years the laws have not been enforced, (4) *protection has come too late*.

Protection will always be ineffective if it is held back until the need for it is generally recognized. It should become operative before it becomes necessary to save a bird from extermination. Its laws should not be enacted merely with the purpose of maintaining the present number of birds. Its province should be to *increase their numbers* before they are in any danger of extinction, and legislation with this end in view *is needed now*.

In 1904 it was stated in my report on the decrease of birds<sup>1</sup> that at least six species of game birds, waterfowl or shore birds had disappeared, and that the wild pigeon was then practically gone from Massachusetts, and also that several other species were then nearly extirpated or driven out. Among these latter the Eskimo curlew was mentioned. To-day the belief obtains among ornithologists that both the passenger pigeon and the Eskimo curlew are extinct. It may be already too late to save the vanishing species, and the wood duck and the upland plover are in great danger.

The question arises, What more can be done to conserve and increase the birds that remain?

### FIRST, WE MUST STOP ALL SPRING AND SUMMER SHOOTING.

Evidently it is most important to allow all birds to breed unmolested. Bobolinks, blackbirds and robins which are protected on their northern breeding grounds maintain their numbers well, though slain in great

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<sup>1</sup> Forbush, Edward Howe, "Special Report on the Decrease of Certain Birds and its Causes, with Suggestions for Bird Protection." Fifty-second report of the Massachusetts State Board of Agriculture.

numbers during the migrations in the south. If the people of New England are not to lose their supply of pond and river ducks, these ducks must be protected throughout the spring migrations and during the breeding season in these States as well as in Canada. Experience shows that in those months when the shooting of any species is allowed all edible ducks will be shot. Let the shooting of all wild fowl stop with the first day of January; let our rivers, shores and bays be free from shooting from January first to September first, and in time wood duck, black duck, teal, loons, Canada geese and other species may come back to our streams, ponds and shores, and breed as they did long ago. Teal once bred as far south as Long Island. Canada geese nested in this State, and even as far south as New Mexico. Now they have been driven north, beyond the borders of the United States.

The mere presence of man disturbs the birds very little, where no shooting is allowed. This has been proved in many cases where the wildest of wild fowl have become very tame in localities where they were unmolested. Since spring duck shooting was stopped by law in New York State the black ducks have bred in considerable numbers on Fisher's Island. New York and Connecticut have already passed laws which establish the beginning of the close season for wild ducks on January 1. New Hampshire takes February 1 as her date, except in one county, and a considerable number of other States and provinces of North America are already in advance of Massachusetts in this matter.

A law should be enacted here forbidding the taking or killing of all wild fowl and shore birds between the first day of January and the first day of September, in order that the birds may be absolutely undisturbed during that season and that some of them may breed here unmolested. Wherever such a law has been passed and enforced in a single State the effect has been beneficial almost immediately, and the birds which have been driven out have come back, bred and increased rapidly.

#### A RESIDENT HUNTING LICENSE.

A law requiring a one-dollar license fee of all resident hunters is now an absolute necessity. Unless such a law is passed the non-resident license law will remain a dead letter, for unless all hunters are licensed it is difficult, if not impossible, for the officers in the field to identify non-residents of the State. A resident license law, which gives to the hunter no privilege he does not now possess and gives to the landowner the right to examine the licenses of all hunters who are found upon his land, would furnish money for the protection and propagation of game, and would largely do away with a class of irresponsible trespassing hunters that is now a source of much irritation and injury to the farming population. Such laws are not experiments. They originated in the agricultural States of the middle west, and have given good results in the protection of birds and game and the safeguarding of rural property.

Wherever the agricultural population can be brought to favor and respect such laws they will prove an unqualified success.

#### PROHIBIT THE SALE OF GAME BIRDS.

How much longer can our game birds be expected to survive with a price set upon their heads? If a man should attempt to cut down a great tree by snipping off the little twigs with scissors, he would

be advised to begin with the axe at the root. In the attempt to protect our game birds we have been clipping away at the little twigs too long. Let us now take up the axe. The laws which have been passed regulating the sale and transportation of game are useful under present conditions, but there is one statutory provision alone which will strike at the root of the evil and check the slaughter of game birds by taking away the incentive for pot hunting, and that is to prohibit the sale of all game birds.

It would be for the interest of the marketman were this enacted, for he is now constantly hampered by restrictions and harassed by legal requirements. It would not, in the end, injure his business, for he would then sell turkeys, chickens, geese, ducks, pigeons, squabs, guineas and possibly pheasants in place of the game he now sells. Such a law would be better for the farmer and poultry raiser, who would be called upon to supply more domesticated birds to take the place of the wild ones now sold. It would be better for the sportsman, who sees himself prohibited from shooting certain wild fowl and other migrating game birds here in certain months only to have them shot by market gunners in other States and sold in our own as well as other markets. Such a law would injure no one except the man who pursues birds for a living, the man who kills the goose that lays the golden egg, the man who exterminates the birds. The time is gone by in Massachusetts and in the east when any man should be allowed to live by the killing of birds and game. This killing birds for gold should be stopped for the benefit of the whole people. We should no longer be allowed to exterminate, and thus deprive posterity of its birth-right in the birds and game.

The market hunter or pot hunter is often a good and worthy citizen, but his day is past and he must adopt some other calling. More than forty States now prohibit the sale of all or a part of their game. Massachusetts should have been among the leaders in this movement.

Next in importance to the elimination of the market hunter comes the bag limit. Some so-called sportsmen are nearly as destructive as the market hunter, but many who now kill so long as their ammunition lasts would respect a legal limit to the number of birds to be killed in a day or in a season.

#### RIGHT OF SEARCH.

The Commissioners on Fisheries and Game and their deputies should be given the power of search without a warrant. This power can be exercised without abuse as it now is in other States. There can be little hope of thorough enforcement of the law until the officers who enforce it have this power.

#### THE SANCTUARY.

Where all other measures promise only failure there is still one resource left, and that is the setting aside of tracts or reservations of woodland, lake, river or shore within the limits of which all killing of birds by man may be prohibited, under heavy penalties. In such tracts or reservations the resident game and birds can breed unmolested, and can replenish the surrounding country. Here migrants can find safety to stop and rest from their long journeys.

A chain of such sanctuaries established along the Atlantic coast of North America would probably preserve our stock of wild fowl and

shore birds indefinitely. The sanctuary has succeeded in Europe, and it is no new idea here. Already in Massachusetts we have been experimenting with it in a small way. One modification of the plan is to forbid the taking or killing of all wild animals or all birds within certain limits, after the plan adopted on Cape Ann in 1897 and in the town of Essex in 1899. In these cases a time limit of five years was set; but such an act might be made perpetual. Park commissioners are given police powers, and can prevent shooting within the limits of their reservations, as the Metropolitan Park Commission and many city park commissioners now do. In 1899 3,000 acres of land were set aside on Wachusett Mountain as a State reservation, and the commissioners in charge were given police powers; this should ensure a permanent game sanctuary for Worcester County. The enactment in 1907, by which the Commissioners on Fisheries and Game were empowered to take 1,000 acres of land on Martha's Vineyard as a reservation for the protection of the heath hen and other birds, is an example of direct legislation for this purpose, more of which will, sooner or later, become necessary.

While efforts should not be relaxed to secure beneficent protective legislation, the most important work that can be done by the bird protectionist is to strive to influence public sentiment regarding the necessity for such enactments, for laws can never be fully enforced until they are respected by the people.









*Gaylord*

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